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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Honorable Phillip B. Hammonds, Superintendent
Board of Education of Jefferson County
2100 18th Street, South
Birmingham, Alabama 35209

Education, Boards of - Municipalities -
Schools - School Lands - Conveyances

The Jefferson County Board of Education ("Board") may enter into the contemplated contractual arrangement with the City of Clay ("City") as long as the school board receives fair and adequate consideration for these transactions and the Board determines that its actions serve a public purpose. The City may enter into the contractual arrangement with the Board as long as any funds expended by the City serve a public purpose and the arrangement does not bind future councils.

Dear Dr. Hammonds:

This opinion of the Attorney General is issued in response to your request on behalf of the Jefferson County Board of Education and City of Clay.

QUESTION

May the Jefferson County Board of Education agree to convey surplus property and a right-of-way and to eliminate the local school booster club's debt in consideration for an agreement with the City of Clay to construct sidewalks on the right-of-way and to forbear formation of a municipal school system for a number of years?

FACTS AND ANALYSIS

In your letter of request, you informed this Office that the Jefferson County Board of Education and the City of Clay seek to enter into an agreement that would benefit both parties. Specifically, the Board owns certain property situated within the City that the Board has declared surplus property. The Board currently leases the structure and adjacent parking lot to the City for its use as a city hall together with related uses. The City has often expressed an interest in purchasing this property, but has not been in a position financially to undertake such a purchase. The City has also expressed an interest in forming its own municipal school system. Currently, the Board owns and operates Clay-Chalkville Middle School and Clay-Chalkville High School, the two public schools that are within the City. Both parties agree there is a need for a sidewalk to be constructed on the Board's real property that abuts the access road serving the middle and high schools.

Based on these concerns and interests, the Board is willing to: (1) convey the surplus property to the City that the City uses as a city hall and for other purposes, (2) convey a limited right-of-way with regard to the real property that abuts the access road to the middle and high schools, and (3) eliminate the debt of the Clay-Chalkville High School Booster Club in its purchase of bleachers. In exchange, the City of Clay will: (1) forbear formation of its own school system for a specified time and (2) construct a sidewalk on the property that abuts the road serving the middle and high schools.

Section 9-15-71 of the Code of Alabama requires that sales or leases by, or made on or behalf of, the State of Alabama or its boards, for real property that is appraised as having a value of more than \$20,000 will be let by open and competitive bid. Section 9-15-82, however, exempts the sale or lease of any real property owned in whole or in part by any county or municipal board of education. Further, section 9-15-70, *et seq.*, does not apply to the transfers of real property between departments, boards, bureaus, commissions, institutions, corporations, or agencies of the state. *See generally*, ALA. CODE § 9-15-82 (2001) & ALA. CODE §§ 16-8-12 and 16-8-12.1 (2001). The approval of the Governor is required with regard to the aforementioned transactions. *Id.*

Section 16-8-40(a) of the Code of Alabama authorizes a county board of education to convey title of real property it owns as long as the proceeds of the sale are applied to school purposes within the authority and jurisdiction of the school board. Opinion to Honorable Roy W. Johnson, Speaker Pro-Tem, dated February 8, 1985, A.G. No. 85-00199; opinion to Honorable Donald B. Sweeney, Jr., Attorney at Law, dated February 11, 1981, A.G. No. 81-00240; and opinion to John R. Hargis, Superintendent, Autauga County Board of Education, dated June 16, 1958.

You informed this Office that the contemplated property is not section 16 property and, thus, not subject to the provisions set out in section 16-20-1, *et seq.*, of the Code of Alabama. Regardless, the Board must receive fair and adequate consideration for the real property sold or leased by it, and the proceeds of the transaction must be used for school purposes. See the following opinions:

- Honorable Stanley E. Munsey, Attorney, Colbert County Board of Education, dated April 10, 2000, A.G. No. 2000-122;
- W. Gregory Ward, Attorney, Chambers County Board of Education, dated January 10, 1995, A.G. No. 95-00085;
- Carl E. Johnson, Attorney at Law, dated June 22, 1989, A.G. No. 89-00335;
- Honorable Roy W. Johnson, Speaker Pro-Tem, House of Representatives, dated February 8, 1985, A.G. No. 85-00199.

Even when the real property will be transferred to another governmental entity, the Board must receive fair and adequate consideration. Opinion to W. Gregory Ward, Attorney, Chambers County Board of Education, dated January 10, 1995, A.G. No. 95-00085. Fair and adequate consideration may be monetary or in the form of benefits to the Board. *Id.* Any nonmonetary benefit should relate to school purposes. *Id.* The Board should determine the value of any nonmonetary benefits. *Id.*

Municipalities are authorized to acquire property by gift or devise for any municipal purpose authorized under title 11. See generally, ALA. CODE § 11-40-1 (1989). Section 94 of the Constitution of Alabama, as last amended by Amendment 558, prohibits a political subdivision of the state from granting money or any other thing of value in aid of a private individual, corporation, or association. ALA. CONST. art. IV, § 94 (amend. 558). This provision, however, does not prohibit one political subdivision from granting property to another political subdivision. *Rogers v. City of Mobile*, 277 Ala. 261, 279, 169 So. 2d 282, 299 (1964). The City is a public entity under section 11-47-1, *et seq.*, and the Board is a public school pursuant to section 16-1-1, *et seq.* Accordingly, the Board may transfer property to the City. See generally, opinion to Honorable Robert L. Potts, President, University of North Alabama, and William T. Musgrove, III, City Attorney, City of Florence, dated April 8, 2004, A.G. No. 2004-115.

As part of this agreement, the Board is willing to eliminate the debt of the Clay-Chalkville High School Booster Club. Previously, this Office has determined that section 16-8-8 of the Code of Alabama bestows plenary power to county boards of education to administer and supervise local schools. Opinion

to Bradley E. Byrne, Member, Alabama State Senate, dated June 28, 2004, A.G. No. 2004-169 at 3. As such, although there may be no specific grant of power to a school board, there is broad authority for that local board of education to act in the best interests of the district's educational policies. *Id.*

Moreover, courts and this Office have stated that school boards may make expenditures that serve a public purpose. In *Slawson v. Ala. Forestry Comm'n*, 631 So. 2d 953 (1994), the Alabama Supreme Court determined that a public purpose has for its objective the promotion of public health, safety, morals, security, prosperity, contentment, and the general welfare of the community. The Court further stated that "[t]he paramount test should be whether the expenditure confers a direct public benefit of a reasonable general character . . . to a significant part of the public, as distinguished from a remote and theoretical benefit." *Slawson*, at 956. The determination of whether an expenditure serves a public purpose must be made by the public entity involved. Accordingly, the Jefferson County School Board may eliminate the debt of the Clay-Chalkville High School Booster Club if the Board determines that a public purpose is served by such an action and such action is in the best interests of the school district.

The City, in this agreement, is responsible for constructing a sidewalk on the property that abuts the road serving the middle and high schools that are located within the City. Pursuant to section 11-48-4 of the Code, a municipality may construct sidewalks. ALA. CODE § 11-48-4 (1992). The City, like the Board, may expend funds to construct the sidewalk if the City determines that a public purpose will be served by such an expenditure. See *Slawson*, 631 So. 2d at 956; *Opinion of the Justices* No. 269, 384 So. 2d 1051, 1053 (Ala. 1980), quoting *Clifford v. City of Cheyenne*, 487 P. 2d 1325, 1329 (Wyo. 1971).

Finally, this agreement requires that the City forbear the formation of its own school system for a specified period of time. In *City of Birmingham v. Holt*, 194 So. 538 (1940), the Alabama Supreme Court, citing 44 Corpus Juris, 88, cited the general rule of a city council as follows:

Under the general rule a council may not by contract bind its successors to forego or to exercise their legislative functions. And the same is true of any city board having legislative authority. Nor has a city officer with discretionary power in the action of business in his department and the requisite authority to make contract with reference thereto a power to bind his successors in matters properly within the discretion of the person holding the office. This rule has been applied to contracts for personal or professional services to the

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city, and to the grant of exclusive franchises or privileges by the city.

Holt at 540. As such, the City may not contractually agree to forbear the formation of its own school system if such an agreement would bind successor councils. In the agreement that was provided with this opinion request, it is the opinion of this Office that successor councils maintain the ability to form their own school system.

The proposed agreement between the Board and the City provides mutual benefits to both parties and consideration on both sides. Whether the consideration is fair and adequate is a factual decision to be determined by the Board. The Board also must also make a determination as to whether a public interest is served by the Board eliminating the debt of the Clay-Chalkville High School. Further, the City has the authority to construct sidewalks and may expend municipal funds in furtherance of that authority. Whether such a project furthers a public interest is an issue to be determined by the governing body of the municipality.

CONCLUSION

The Jefferson County Board of Education may enter into the contemplated contractual arrangement with the City of Clay as long as the school board receives fair and adequate consideration for these transactions and the Board determines that its actions serve a public purpose. The City may enter into the contractual arrangement with the Board as long as any funds expended by the City serve a public purpose and the arrangement does not bind future councils.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Monet Gaines of my staff.

Sincerely,

TROY KING
Attorney General
By:


BRENDA F. SMITH
Chief, Opinions Division

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